

FILED

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

NOV 21 2006


CLERK

AMERICAN FAMILY INSURANCE GROUP,)
Plaintiff,) 36-5095
)
v.) COMPLAINT FOR
ARLETH & ASSOCIATES, INC., and) DECLARATORY RELIEF
SIERRA ROCK & DIRT, INC.,)
Defendants.)

Plaintiff, by counsel of record, states its claim for declaratory relief against Defendants as follows:

1.

Plaintiff is an insurance company licensed to do business in the State of South Dakota, with its principal place of business located in Madison, Wisconsin.

2.

Defendant Arleth & Associates, Inc. (hereinafter Arleth) is a corporation organized and existing under the laws of the state of South Dakota, with its principal place of business located in Deadwood, Lawrence County, South Dakota.

3.

Defendant Sierra Rock & Dirt, Inc. (hereinafter Sierra) is a corporation organized and existing under the laws of the state of Montana, which at times relevant to this action, conducted

business in the State of South Dakota.

4.

This Court has jurisdiction under 28 U.S.C. § 1332 et seq, as there is a complete diversity of citizenship among the parties, and the amount in controversy exceeds \$75,000.00.

5.

Sierra has initiated a civil action in Circuit Court, Fourth Judicial Circuit, Lawrence County, South Dakota, alleging damages, all as contained in a Complaint dated January 12, 2006. A copy of said Complaint is attached as Exhibit 1, and will be referred to herein as the Complaint in the Litigation.

6.

For a period of time, on and after January 12, 2003, Plaintiff issued its Business Key Policy to Arleth, under the terms of its policy number 40-X80967-09 providing various coverages to Arleth & Associates, Inc., under the terms and conditions of the insurance policy. A copy of said policy will be filed with the Court.

7.

In the Litigation, Sierra alleges various claims and theories of recovery against Arleth, and alleges claims for monetary damages against Arleth.

8.

Based on all facts and circumstances, and under South Dakota

Law, the policy issued by Plaintiff to Defendant Arleth does not afford coverage for the matters alleged in the Complaint in the Litigation, and based thereon, Plaintiff has no duty to defend Defendant Arleth in the Litigation, or to indemnify Defendant Arleth for or from any amounts that may be adjudged against Defendant Arleth in the Litigation, for reasons including, but not limited to, the following:

- a) The alleged acts set forth in the Complaint allege matters that occurred outside the policy effective period.
- b) The Complaint alleges claims constituting alleged liability assumed under a contract or agreement.
- c) The Litigation alleges claims which claim a breach of contract.
- d) The Complaint alleges claims arising out of the failure of goods, products or services to conform with any statement of quality or performance made in an "advertisement."
- e) The matters alleged, and the damages claimed, do not allege "bodily injury," or "property damage" as defined in the policy.
- f) The matters alleged in the Complaint are not based on matters that would constitute an "occurrence" or an "accident."
- g) The matters alleged in the Complaint do not allege matters that come within the "Personal and Advertising Injury Liability" section, or any other section of the policy.

h) The Complaint alleges claims for punitive damages, which are not covered under the policy.

i) Plaintiff reserves the right to amend this Complaint should additional policy exclusions and issues be disclosed and discovered in this action.

9.

A justiciable controversy exists among the parties who are entitled to relief under SDCL Chapter 21-24, and other applicable state and federal law; and this Court should determine the controversy existing.

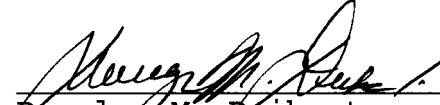
WHEREFORE, Plaintiff prays that the Court enter Judgment declaring Plaintiff has no duty to defend Defendant Arleth in the Complaint in the Litigation; and Plaintiff has no duty to indemnify Defendant Arleth for or from any amounts that may be adjudged in favor of Sierra Rock & Dirt, or any other party, in the Complaint in the Litigation, against Defendant Arleth.

Plaintiff further prays that it be awarded its costs and disbursements in this action, along with such other and further relief the Court deems just and equitable.

Dated at Sioux Falls, South Dakota, this 22 day of
November, 2006.

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By


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